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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

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No. [redacted]80

MRS. MARILYN CAGLE, INDIVIDUALLY AND AS GUARDIAN FOR DANNY RAY CAGLE, MINOR, *Petitioner,*

vs.

GEORGE F. McQUEEN AND ART STOUT, INDIVIDUALLY, ETC. D/B/A McQUEEN AND STOUT,

AND

GULF OIL CORPORATION, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

WARREN E. MILLER,
JOHN J. WATTS,
JEROME POPE,
Counsel for Petitioner.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Mrs. Marilyn Cagle, individually and as guardian for Danny Ray Cagle, a minor, prays that a writ of certiorari be issued to review a judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above case on December 2, 1952 (R. 345).

Opinion Below

The opinion below is reported in 200 F. 2d 186-191 (R. 337-344).

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on December 2, 1952 (R. 345), petition for rehearing was denied January 19, 1953 (R. 353), and this court on April 17, 1953, extended the time for filing this petition for writ of certiorari to and including May 19, 1953.[1] The jurisdiction of this court is invoked under Title 28 U. S. C. 1254.

Question Presented

Where a prospective juror in a United States District Court in Texas, in a suit based upon diversity of citizenship, on his *voir dire* examination denies bias or prejudice and is accepted as a juror on this statement, and it later appears the juror was prejudiced aganst the attorney for the plaintiff, does such prejudice when brought to the attention of the District Court on petition to set aside judgment and for a new trial require the verdict rendered against such attorney's client to be set aside?

Statutes Involved

28 U. S. C. 1861 provides:

> "Any citizen of the United States who has attained the age of 21 years and resides within the judicial district, is competent to serve as a grand or petit juror unless:
>
> • • •
>
> "(4) He is incompetent to serve as a grand or petit juror by the law of the State in which the district court is held."

[1] 28 U. S. C. 2101(c) authorizes this action.

Article 2134 Subsection (4) of the Revised Civil Statutes of Texas, 1925, provides that a person shall be disqualified to serve as a juror who has a bias or prejudice in favor of or against either of the parties.

Sec. 15, Article I, of the Texas Constitution, provides that the right of trial by jury shall remain inviolate.

Statement

A suit (R. 2-11), based upon diversity of citizenship, was filed in the United States District Court for the Western District of Texas for the wrongful death[2] of Ray E. Cagle by his widow for herself and as guardian of her minor son, based upon gross negligence of his employers. This case was submitted to a jury, which returned a verdict in favor of defendants (R. 278-9).

Petitioner requested a new trial because of the prejudice of a juror, Verner E. Danielson, against petitioner's attorney, John J. Watts. This juror on his *voir dire* answered in the affirmative the question of whether he could be a fair and impartial juror.

The motion for new trial was supported by an affidavit from the juror, Danielson (R. 287). The court below quoted from this affidavit showing that this juror a few days before the trial, had stated in substance

> "to a lawyer friend in connection with the litigation that 'I had heard something about a lawyer who had most of the damage suit cases in that Court, and from what I had heard I had concluded that he was using the Court for a sort of racket which I did not approve of, and that for that reason I probably would not be accepted as a juror in any case that this lawyer was trying;' that at the time he made the statement, he may not have known the lawyer's name to whom he referred but at the time of the

[2] The Wrongful Death Statute of Texas is found in Title 77 of the Revised Civil Statutes of the State of Texas.

making of the affidavit, he knew that it was John Watts; that 'I listened carefully to all of the evidence and to the Court's charge. I sincerely believe that I followed the Court's charge and gave my decision as fairly as if I had never heard anything which prejudiced me against Mr. Watts. I do not believe that anything I had previously heard or any opinions I had about Mr. Watts personally, in any way affected * * * my decision'."

Reasons for Granting Writ

1. The Fifth Circuit Court of Appeals in this case has decided an important question of local law which conflicts with applicable local decisions. The Texas statute here applicable[3] providing that a person shall be disqualified to serve as a juror who is biased or prejudiced against a litigant has been extended to prejudice against the attorney for such litigant by the Supreme Court of Texas in the case of *Rhoades* v. *El Paso and S. W. Ry. Co., et al.*, 248 S. W. 1064.

2. The decision of the Court below presents a question of importance which should be determined by this Court. If jurors are permitted to proceed with the hearing in a case in which they are prejudiced, as here, after they have been accepted as a result of stating they are not prejudiced and are thereby permitted to serve, the fundamental principles of our system of jurisprudence guaranteeing trial by a fair and impartial jury, a bulwark of our system of jurisprudence, will be circumvented.

3. The public interest will be promoted by settlement of the question here presented by this Court. To permit such a situation as exists here to whittle away the fundamental right of trial by jury is not limited to this particu-

[3] Article 2134(4) of the Revised Civil Statutes of Texas, 1925, quoted under "Statutes Involved", *supra*.

lar case, but the principle established by the Court below when applied as a precedent to future litigation originating in Texas in which this situation arises will cause a far-reaching detrimental effect upon our judicial system.

WHEREFORE, petitioner prays that a writ of certiorari issue under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Fifth Circuit commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings had in the case numbered and entitled in its docket as 13,955, *Mrs. Marilyn Cagle, Individually and as Guardian for Danny Ray Cagle, a minor son, Appellants,* vs. *Gulf Oil Corporation, et al., Appellees,* to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the order herein of the said United States Circuit Court of Appeals for the Fifth Circuit be reversed by this court, and for such other, further, or different relief as to this court may seem proper.

WARREN E. MILLER,
JOHN J. WATTS,
JEROME POPE,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 811

MRS. MARILYN CAGLE, INDIVIDUALLY AND AS GUARDIAN FOR DANNY RAY CAGLE, MINOR, *Petitioner,*

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GULF OIL CORPORATION, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Opinion of the Court Below

The opinion of the Court below is reported in 200 F. 2d 186-191.

Jurisdiction

Reference is made to jurisdictional statement in the petition.

Statement of the Case

Reference is made to the "Statement" in petition.

Specification of Errors to be Urged

The court erred:

1. In holding that the affidavit of the juror Verner E. Danielson does not show that he was not competent to serve as a juror;

2. In holding that such affidavit does not disclose anything improper on his part in determining the fact issues which were submitted for jury determination;

3. In overruling petitioner's motion to set aside judgment and for a new trial.

Summary of Argument

Where a juror denies the existence of bias or prejudice in favor of or against either party to a suit, and is thereafter accepted as a juror on the basis of such statement, the complaint by the party against whom such bias or prejudice exists is a proper ground for setting aside the verdict.

Argument

From the affidavit of the juror Verner E. Danielson (R. 287-8) it appears that this juror a few days before the trial told a lawyer that he "had heard something" about a lawyer who had most of the damage suit cases in the court stating

> "and from what I had heard I had concluded that he was using the court for a sort of racket which I did not approve of and for that reason I probably would not be accepted as a juror in any case which this lawyer was trying. I do not now recall that I knew this lawyer's name at that time, to whom I referred; but I now know that it was John Watts."

This statement on the part of the juror showed that he had a prejudice against damage suits and had formed the

opinion that the attorney for petitioner was in a sort of "racket" of which he did not approve. By using the term "racket", he clearly inferred that petitioner's attorney was engaged in obtaining money fraudulently. Racketeers are generally referred to as those who engage in dishonest practices for profit. This juror obviously knew that if he admitted this prejudice he would not be accepted as a juror, as established by his own affidavit. This clearly shows a strong prejudice against petitioner's attorney, Watts. No matter what he said after returning a verdict, his remarks would not excuse his wanton misconduct in not divulging his prejudice when questioned on his *voir dire.*

His statement cannot be accepted as conclusive evidence of impartiality, as the test of bias sufficient to exclude a juror for cause is not what the particular juror himself believes. Long ago Chief Justice Marshall ruled that a person

> "may declare that he feels no prejudice in the case, and yet the law cautiously incapacitates him from serving on the jury because it suspects prejudice; because in general persons in a similar situation would feel prejudice." 1 Burr's Trial, 414, 415, 25 Fed. Cas. 14696 at p. 50.

This court, while recognizing that persons of the "highest honor and greatest self-sacrifice" would not be influenced by fear of financial losses, has said that

> "every procedure which would offer a possible temptation to the average man as a judge * * * not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." *Tumey* v. *Ohio*, 273 U. S. 510, 532, 71 L. Ed. 749, 758, 47 S. Ct. 437, 50 A. L. R. 1243.

The Texas cases on this matter are controlling because it is provided by 28 U. S. C. A. 1861, Sub-division 4, that:

"No one is competent to serve as a grand or petit juror unless he is competent so to serve by the law of the State in which the District Court is held."

Article 2134(4) of the Revised Civil Statutes of Texas, 1925, provides that a person who has a bias or prejudice in favor of or against either party to a suit shall be disqualified from serving as a juror. The opinion of the Commission of Appeals adopted by the Supreme Court of Texas in *Rhoades v. El Paso and S. W. Ry. Co., et al.*, 248 S. W. 1064, should be the only case that this Court needs to consider to grant this Writ and to reverse this cause. We quote from the *Rhoades* case as follows:

"Among the reasons which disqualify a juror in a particular case under the provisions of article 5117 is the fact that such juror has a bias or prejudice in favor of or against either of the parties to the suit. In such cases it is not necessary that the disqualifying bias or prejudice shall relate solely to the party personally, but it may also relate to such party's case as presented for trial before the jury. *Couts* v. *Neer*, 70 Tex. 468, 473, 9 S. W. 40.

"If a juror, when tested on his *voir dire* concerning his qualifications to sit on the jury in a particular case, denies the existence of any bias or prejudice in his mind in favor of or against either party to the suit, and is accepted as a juror on such statement, according to the great weight of authority, when such bias or prejudice does exist, the party against whom the same exists can complain of the same as a ground for setting aside the verdict. He is not required to show that such bias or prejudice caused or contributed to cause the return of an unjust verdict in his case. It is sufficient that he, without his fault, has been deprived of the constitutional and statutory guaranty of a trial of his case before a fair and impartial jury. It is immaterial in such cases whether a regular statement of

facts is found in the record or not. *Henrie* v. *State*, 41 Tex. 573, 579, 580; *Couts* v. *Neer, supra; Makey* v. *Dryden*, — Tex. Civ. App. — , 128 S. W. 633, 635, 636 (writ refused); *Kansas City L. Ins. Co.* v. *Elmore*, — Tex. Civ. App. — , 226 S. W. 709, 714, 715; *Gulf, C. & S. F. R. Co.* v. *Dickens*, 54 Tex. Civ. App. 637, 118 S. W. 612, 614, 615; *Texas & P. R. Co.* v. *Elliott*, 22 Tex. Civ. App. 31, 54 S. W. 410; *Hanks* v. *State*, 21 Tex. 526; *Long* v. *State*, 32 Tex. Crim. Rep. 140, 22 S. W. 409; *Hughes* v. *State*, — Tex. Crim. Rep. — , 60 S. W. 562, 563, 566; *Heasley* v. *Nichols*, 38 Wash. 485, 80 Pac. 769; *Gibney* v. *St. Louis Transit Co.*, 204 Mo. 704, 103 S. W. 43; *West Chicago Street R. Co.* v. *Huhnke*, 82 Ill. App. 404; *French* v. *Smith*, 4 Vt. 363, 24 Am. Dec. 616, 619; *Birmingham R. Light & P. Co.* v. *Drennen*, 175 Ala. 338, 57 So. 876, Ann. Cas. 1914C, 1037."

In *Smith* v. *Allbright*, 279 S. W. 852, the Court of Civil Appeals of Texas at page 856, citing the above case, stated:

> "The authorities in this state are universal in holding that, where a juror in a particular case denies the existence of any bias in his mind in favor of or against either party to the suit, and is accepted as a juror on such statement, the party against whom such bias or prejudice exists can complain of the same as a ground for setting aside the verdict."

It appears quite clear that if a juror is disqualified because of prejudice against an attorney who handles a case upon a contingent fee basis, certainly one who thinks that an attorney is making a "racket" out of damage suits would be disqualified as in the case at bar.

It has been held that one who is prejudiced against negligence actions is not a competent juror in such an action. In *Quill* v. *Southern P. Co.* (Cal.), 140 Cal. 263, 73 Pac.

991, an action for wrongful death, it was held to be error to deny challenges for cause to jurors who felt a prejudice against suits to recover damages for personal injuries, believing that many such were brought without merit, and that the number was constantly increasing. In *Fitts* v. *Southern P. Co.* (1906), 149 Cal. 310, 118 Am. St. Rep. 130, 86 Pac. 710, it was held to be error to disallow a challenge to a juror in a negligence case, where the juror held a fixed and abiding prejudice against negligence actions.

The law in Texas and throughout America on failure of a juror to disclose prejudice upon *voir dire* examination is so well stated in *Texas Employers' Insurance Association* v. *Wade*, 197 S. W. 2d 203, we quote from that decision at length, as follows:

> "In 39 American Jurisprudence, page 65, Sec. 45, it is stated:
>
> "It seems generally agreed that when matters which might establish prejudice or work a disqualification of a juror are actually gone into upon the *voir dire* examination and false answers are given or deception is otherwise practiced, as a result of which a juror, although disqualified in fact, is accepted, the party misled or deceived thereby, upon discovering the fact of the juror's incompetency or disqualification after trial, may assert that fact as ground for and obtain a new trial, upon a proper showing of such facts, even though, it has been held, the bias or prejudice is not shown to have caused an unjust verdict; it is sufficient that a party, through no fault of his own, has been deprived of his constitutional statutory guaranty of a trial of his case before a fair and impartial jury. The fact that objection was not made to the juror or an exception saved is not controlling. Apparently no distinction is to be made between merely statutory disqualifications and those which affect the impartiality of the juror. Some courts indeed have

declared that the constitutional rights to an impartial jury would be infringed if a new trial were not granted where a juror testified falsely as to his impartiality, and the trial court may, on its own motion, during the trial term, grant a new trial upon this ground."

"The failure of a juror in a damage suit when interrogated on this point on *voir dire,* to disclose the fact that he or some member of his family was, or has been involved in another action for damages, or that a judgment for damages had been rendered against him or some member of his family in another action, will furnish grounds for setting aside the verdict and granting a new trial, when the falsity of his answers are discovered after trial.

"In 31 American Jurisprudence, page 638 Section 108, it is stated: 'Duty and Conduct of Juror,—Full knowledge of all material and relevant matters is essential to a fair and just exercise of the right to challenge either for cause or peremptorily, and it is the duty of a juror to make full and truthful answers to such questions as are asked him, neither falsely stating any fact nor concealing any material matter. If he falsely misrepresents his interest or situation, or conceals a material fact relevant to the controversy, he is guilty of misconduct, and such misconduct is prejudicial to the party, for it impairs his right to challenge. Such concealment or misstatement is punishable as contempt if its tendency and design are to obstruct the processes of justice, and the privilege from disclosure of the deliberations of a jury does not apply in the case of a juror who has procured his acceptance or retention as such by misrepresentation, even though it may also constitute the crime of perjury.'

"In the case of *Gossett* v. *Jones,* Tex. Civ. App. 123, S. W. 2d, 724, 726, this court had under con-

sideration a case in which a jury, when questioned on *voir dire* examination, failed to disclose the fact that he was related to the appellee within a prohibited degree under Article 2134 of the Revised Civil Statutes of Texas. These facts were set up fully in an affidavit attached to appellant's motion for a new trial. This court, in reversing and remanding the cause for a new trial, held: 'The record fails to disclose that appellants' counsel were negligent in failing to discover these facts, or that they failed to disclose them to the court immediately on making the discovery. Under the above facts, appellants' motion presented good grounds for a new trial. 26 Texas Jurisprudence, page 740, Sec. 173; *Stringfellow* v. *State*, 42 Tex. Cr. R. 588, 61 S. W. 719; *Texas Pacific Railway Co.* v. *Elliott*, 22 Tex. Civ. App. 31, 54 S. W. 410.'

"In the early case of *Texas & Pacific Railway Co.* v. *Elliott*, 22 Tex. Civ. App. 31, 54 S. W. 410, 411, one of the jurors failed to reveal that he was related within the third degree to appellant's wife, who was not a party to the suit but who would have benefited by a recovery by the plaintiff. In holding that the proposition presented reversible error, the court said: 'The attorney for defendant believed that by remaining silent the juror intended to answer that he was not related to either party. The fact of relationship between the juror and plaintiff's wife is made to appear by affidavit attached to the motion for a new trial, and, further, that these facts first came to the knowledge of the defendant's attorney after the trial. It clearly appears that defendant's attorney was not guilty of any negligence in failing to discover these facts. The motion presented good grounds for a new trial, and the court erred in refusing to grant the same. *McGegee* v. *Shafer*, 9 Tex. 20. 24; *Hanks* v. *State*, 21 Tex. 526.'

"In the case of *Gulf, C. & S. F. Ry. Co.* v. *Dickens,* 54 Tex. Civ. App. 637, 118 S. W. 612, 615 (no writ applied for), error was assigned based upon the fact that one of the jurors who tried the case had a preconceived idea as to the rights of the party and was thus biased, and that on *voir dire* examination he had testified that he was not biased or prejudiced and had no opinion as to the merits of the case. The court, in holding that the trial court was in error, in its opinion said: '* * * A fair and impartial trial by a fair and impartial jury is what the law exacts, and this requirement becomes a declusion if men with bias or prejudice or preconceived ideas of the rights of one are allowed to set in judgment on his case. *Hughes* v. *State,* Tex. Cr. App. 60 S. W. 562, 565. The facts show that counsel for the appellants were misled into the belief that the juror was fair and impartial, and they did all that could be done to obtain from him the facts, and only learned the truth after the trial. We feel sure that the learned trial judge would have allowed the challenge to the juror if he had told upon his examination the facts that were developed on the motion for new trial. Consequently we are of opinion that these assignments present reversible error, for which the judgment must be reversed.'

"While the Texas courts have not spoken precisely upon the facts here involved, except by way of analogy, insofar as we have been able to ascertain, there are cases from other jurisdictions which are in point upon the factual situation here existing, which we think set forth the only proper and safe rule that can be followed.

"In the case of *Pearcy* v. *Michigan, Mutual Life Ins. Co.,* 111 Ind. 59, 12 N. E. 98, 99, 60, Am. Rep. 673, the court in its opinion announced the rule that:

'That examination of a juror on his *voir dire* has a two-fold purpose, namely, to ascertain whether a cause for challenge exists, and to ascertain whether it is wise and expedient to exercise the right of peremptory challenge given to parties by the law. It is often important that a party should know the relation of a person called as a juror to his adversary, in order that he may interpose a challenge for cause, or exercise his peremptory right to challenge. It is the duty of a juror to make full and truthful answers to such questions as are asked him, neither falsely stating any fact, nor concealing any material matter, since full knowledge of all material and relevant matters is essential to the fair and just exercise of the right to challenge either peremptorily or for cause. A juror who falsely misrepresents his interest or situation, or conceals a material fact relevant to the controversy, is guilty of misconduct, and such misconduct is prejudicial to the party, for it impairs his right to challenge. In this instance, the appellant had a right to a full and truthful answer from Bowman, and it was his duty to make that answer without evasion, equivocation, or concealment.'

"Another leading case bearing upon this subject is the case of *Shulinsky* v. *Boston & M. R. R.*, 83 N. H. 86, 139 A. 189, 191. One of the jurors in that case had had some dealings with the plaintiff, but on *voir dire* examination, though asked, he remained silent and concealed his business relations with the plaintiff. The trial court refused to grant a new trial and the Supreme Court, in holding that a new trial should have been granted, said:

'* * * if by reason of false information furnished under the court's authority and in organizing the jury, a peremptory challenge as to a prospective juror is not exercised, the party having the right of

challenge is as effectively deprived of his right as though the rights were denied—False information thus obtained and relied on is as destructive of a fairly constituted jury in its application to a peremptory challenge as to a challenge for cause. * * *

'Argument that a finding that the trial was fair is not pertinent. The question is whether a proper tribunal was established, and not whether an improperly established tribunal acted fairly. * * *

'If due diligence has been used and there is no waiver of rights, the fact that a juror disqualified either on principal cause or to the favor has served on a panel is sufficient ground for setting aside the verdict, without affirmatively showing that the fact accounts for the verdict. The trial is unfair because the jury is improperly constituted. * * * Nor is there any force in argument that the information although false was unintentionally so, and that there was therefore no bad faith. The harm lies in the falsity of the information, regardless of the knowledge of its falsity on the part of the informant. * * *

'* * * The facts here appearing that false information was given as an incident relating to the trial and that it was relied upon without lack of due diligence, the right to a new trial follows as a matter of law.'

'Under our jury system the parties to a suit may exercise their peremptory challenge in selecting a jury with adequate information concerning the prejudices, bias, point of view, and qualifications of the respective jurors on the panel. To permit a juror to conceal information that would affect the right of the attorneys trying the case in exercising their peremptory challenge would destroy the right to trial by a statutory jury.' "

In a controversy over an estate, in the case of *Kennard* v. *Kennard,* 26 S. W. (2d) 336 in the Texas Civil Court of Appeals, the losing parties appealed on the sole question of misconduct of the jury, contending one of the jurors was prejudiced against them and by reason thereof volunteered statements and information in the jury room which required the case to be reversed. The Court did reverse, stating:

> "It is not required of the complainant to show that probable injury has occurred. The right to a trial by jury has always been held sacred. Litigants are entitled to a jury trial by men who are unbiased or unprejudiced * * *." *Kennard* v. *Kennard,* (Texas Civil Appeals) 26 S. W. 2d 336 (1930), at page 337.

In a suit on an insurance policy the insurer appealed on the ground that one of the jurors was prejudiced against the company's president, the Texas Court of Civil Appeals in *Texas Mutual Life Ins. Association* v. *Morris,* 55 S. W. (2d) 146, said:

> "As has been often said, the right of parties litigant to a fair and impartial trial before an unbiased and unprejudiced jury should and must be, in so far as possible, maintained inviolate by our courts. Our statutes provide that a person who entertains bias or prejudice against or toward one of the parties litigant is not a qualified juror. Our courts uniformly hold that, if one juror is disqualified, the parties have been deprived of their constitutional or statutory right to a fair and impartial trial. We think the trial court erred in refusing to grant applicant a new trial because of the disqualifications of the juror Logan."

The following remarks of the Court of Civil Appeals of Texas in *El Paso Electric Co.* v. *Gambrell,* 292 S. W. 577, at page 580, are believed pertinent:

"It is said in *G. C. & S. F. Ry. Co.* v. *Dickens,* 54 Tex. Civ. App. 637, 118 S. W. 613, that a fair and impartial jury is what the law exacts, and this requirement becomes a delusion if men with bias or prejudice or preconceived ideas of the rights of one are allowed to sit in judgment on his case. It is not necessary that the disqualifying bias or such preconceived ideas shall relate solely to the very party personally, but it may relate to such party's case as presented for trial before the jury. *Rhoades,* v. *El Paso & S. W. Ry. Co.* (Tex. Com. App.), 248 S. W. 1064, 27 A. L. R. 1040; *Smith* v. *Allbright* (Tex. Civ. App.) 279 S. W. 852; *Kansas City L. Ins. Co.* v. *Elmore* (Tex Civ. App.), 226 S. W. 715; *Couts* v. *Neer,* 70 Tex. 468, 9 S. W. 40."

Conclusion

It is respectfully submitted that for the reasons stated this petition for writ of certiorari should be granted, and that upon a review of this case the decision of the Court below be reversed.

Respectfully submitted,

WARREN E. MILLER,
JOHN J. WATTS,
JEROME POPE,
Counsel for Petitioner.